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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169018

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 18, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Robert Derendinger

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. The petitioner lives with family members.

2. On May 27, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST). The PCST indicated that the petitioner needed 37.75 hours of Personal Care Worker (PCW) services.
3. On June 5, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 37.75 hours per week of PCW services for 53 weeks. This was at a total cost of \$40,015.00.
4. On August 17, 2015 the Department notified the petitioner in writing that it approved 12.25 hours per week of PCW services.
5. The petitioner has diagnoses of "mental retardation", ADHD (attention deficit hyperactivity disorder), and developmental speech disorder.

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;

11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code. §DHS 101.03(96m)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider, on behalf of the petitioner, requested 37.75 hours per week of Personal Care Worker (PCW) hours. According to the letter from the respondent, DHS approved 12.25 hours per week of services. At the hearing petitioner requested 28 hours per week of PCW time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

The petitioner has diagnoses of “mental retardation”, ADHD (attention deficit hyperactivity disorder), and developmental speech disorder.

The petitioner’s provider requested PCW time in the areas of bathing, dressing, grooming, eating, mobility, toileting, transfers, medication assistance, behaviors and medical conditions, and services incidental to activities of daily living.

The Department approved the maximum amount of time for the areas of bathing, dressing, grooming, behaviors and medical conditions, and services incidental to daily living. The Department did not allow the time requested for eating, mobility, toileting, transfers, and medication assistance.

With respect to eating, the Department notes that the PCST states that the petitioner is able to feed himself, but will not sit still to complete the task. The PCST goes on to state that the petitioner needs constant supervision and needs to be told to sit down to finish eating. The Department denied the petitioner’s requested time in this area because his Individualized Education Plan (IEP) from school states that he is independent with toileting, brushing his teeth, and washing his face with reminders. They reason that if he is independent in those areas, he is would also be independent in the area of eating.

I disagree with the Department’s analysis. The IEP does not mention eating. The petitioner suffers from “mental retardation.” He is very difficult. The Department has allowed additional time for the areas that the petitioner needs assistance due to his difficult behavior. The PCST notes that he is unable to follow directions. Given his condition and behaviors, it is consistent that his mother would have to provide some physical assistance during meal time. For that reason, I have allowed the requested 20 minutes of eating assistance for both breakfast and dinner for a total time of 40 minutes per day. This is an additional 280 minutes per week. This time will be increased by 1.25 because of the petitioner’s difficult behaviors. The total amount of time is discussed below.

With respect to mobility, the Department notes that the petitioner’s IEP states that the petitioner “runs around the room, making noises/yelling, jumping high...” The PCST states that the petitioner has no safety awareness, and will run outside if he is not constantly supervised. The Department highlights that mobility refers to mobility within the home. The home does not include basements, attics, yards, or any equipment used outside the home. I agree with the Department in this area. I further note that the petitioner has no functional limitations with respect to mobility. For all these reasons, I have not included any time in this area.

With respect to toileting the Department notes that petitioner’s IEP is inconsistent with the PCST. The IEP states that the petitioner is independent with toileting. He sometimes needs reminders to wash his hands, but is otherwise independent. The PCST states that the petitioner needs supervision to ensure that he urinates in the toilet and not elsewhere. Even if the petitioner misses the toilet, there is time allowed for activities incidental to ADLs. That area would include cleaning up the petitioner’s misses. The PCST is not specific about how this occurs. There is no medical history of the petitioner urinating inappropriately. I agree with the Department in this area, and for all of the above stated reasons, I have not included any time in this area.

With respect to transfers the PCST states that the petitioner needs intermittent supervision/cueing for transfers. Per the time allocation table, time is not allotted for that selection. Therefore, the Department correctly did not allow for any time in this area.

Medication assistance is a medically oriented task (MOT). An MOT may only be included on the PCST if it is ordered by the physician, included in the plan of care and delegated to the PCW by the Registered Nurse supervisor. The petitioner’s plan of care does not meet these requirements. I note that the

petitioner suffers from “mental retardation.” In the future this area could be covered if the provider is able to meet the above stated requirements for an MOT. Given the current documentation, I cannot approve PCW time in this area.

The petitioner’s total ADL time is the amount allowed and approved by the Department plus the additional time I allowed for eating assistance. Thus, the total ADL time of 770 minutes per week was calculated as follows:

Bathing – 210 minutes per week
Dressing Upper and Lower Body – 140 minutes per week
Grooming – 140 minutes per week
Eating Assistance – 280 minutes per week
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Total – 770 minutes

The Department allowed for an additional $\frac{1}{4}$ of the total ADL time because the petitioner has behavioral issues that make ADLs more time consuming. Specifically the petitioner hits and yells at the PCW. $\frac{1}{4}$ of the total ADL time (770 minutes) is 192.5. Thus, I have allotted this additional time.

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming petitioner. For an individual who does not live alone, time equal to $\frac{1}{4}$ of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. $\frac{1}{4}$ of the total ADL time (770 minutes) is 192.5. Thus, I have allotted this additional time.

The petitioner’s total time is 1150 minutes / 19.25 hours per week. This time was calculated as follows:

ADL time – 770 minutes per week
Extra time for difficult behaviors – 192.5 minutes per week
Services Incidental to ADLs – 192.5 minutes per week
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Total – 1150 minutes per week (19.25 hours per week)

Time is allocated in 15 minute increments as each unit is 15 minutes of PCW time. 19.25 hours amounts to 77 units per week of PCW time.

I note to petitioner that the provider will not receive a copy of this Decision. In order to have the PCW hours approved here, petitioner must provide a copy of this Decision to the provider. Then, the provider must submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

1. DHS incorrectly modified the PCW hours requested.
2. The petitioner requires 19.25 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That the petitioner’s provider is hereby authorized to provide the petitioner with 19.25 PCW hours weekly for the period beginning June 5, 2015, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

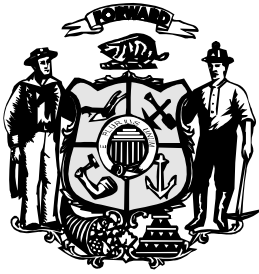
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of December, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 16, 2015.

Division of Health Care Access and Accountability